U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 05 2007

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner is a manufacturer and seller of network data storage products. According to Part 5 of the petition, the petitioner seeks to employ the beneficiary permanently in the United States as a "member technical staff, software" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a Master's degree. The director's conclusion, however, is based on an analysis of the beneficiary's undergraduate degree, not his graduate degree.

On appeal, counsel asserts that the beneficiary has the foreign equivalent of a U.S. Master's degree. While counsel relies on legal opinions with little authoritative weight, the record supports the assertion that the beneficiary has the necessary education.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.* The petitioner, however, is not asserting that the beneficiary has a baccalaureate degree plus five years of experience. Rather, the petitioner is asserting that the beneficiary has an academic or professional degree or a foreign equivalent degree above the baccalaureate level.

The beneficiary possesses a foreign three-year bachelor's degree and a two-year Master of Science degree in Computer Science from the University of Pune in India. Thus, the issue is whether this education can serve to qualify the beneficiary for the classification sought.

On appeal, counsel relies on a letter from Mr. [redacted], Director of the Business and Trade Services Branch of the Office of Adjudications of United States Citizenship and Immigration Services (CIS) and *Grace Korean United Methodist Church v. Michael Chertoff,* CV 04-1849-PK (D. Ore. Nov. 3, 2005).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the federal circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74, 75 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS,* 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA,

even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

The Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (Dec. 7, 2000).

Grace Korean is also not a binding precedent, but is an unpublished decision of a court from a different district than the one in which this case arose. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of those particular proceedings, the unpublished decision of a court from a different district would necessarily have even less persuasive value.

Regardless, we note that *Grace Korean* involved a lesser classification than the one sought in this matter. Significantly, a judge in the same federal district found that CIS is entitled to deference in interpreting its own regulatory definition of advanced degree. *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. 2006).

As noted above, the ETA 750 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(5)(A)(i); 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).[1]

[1] *Cf. Hoosier Care, Inc. v. Chertoff*, No. 06-3562 (7th Cir. April 11, 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. 244, 245 (Regl. Commr. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991).

In this matter, however, the petitioner is not relying on a combination of multiple lesser degrees or education and experience to equate to a bachelor's degree. Rather, it is the petitioner's contention that the beneficiary's education, culminating in the completion of a Master of Science degree from the University of Pune, constitutes a foreign equivalent degree to a U.S. academic or professional degree above the baccalaureate level. The petitioner initially submitted a credentials evaluation from [redacted] of Education Evaluators International. The evaluation indicates that the beneficiary's combined studies "are equivalent in level and purpose to a Master of Science in Computer Science awarded by regionally accredited colleges and universities in the United States." In response to the director's request for additional evidence, the petitioner submitted two additional evaluations, one from Professor [redacted] of the Medgar Evers College of the City University of New York, and the other from [redacted] of the Trustforte Corporation. Professor [redacted] concludes that by "completing a two-year graduate-level program in Computer Science, following his completion of a three-year program concentrated in Computer Science, the candidate fulfilled the equivalent of a Master of Science Degree in Computer Science from an accredited US college or university." Professor [redacted] further explains that in "the prevailing view of the international academic community, a Master of Computer Science Degree issued by a major Indian university (such as the University of Pune) is directly equivalent to a Master of Science Degree in the same field of specialty issued by a US university." Finally, Professor [redacted] states:

> I note that the Master of Computer Science Degree awarded to [the beneficiary] would be considered a single-source foreign equivalent degree at a master's level in the field of computer Science. The fact the Master of Computer Science program completed by the candidate was preceded by a three-year Bachelor of Science in

[2] *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Computer Science does not diminish the equivalency of the Master of Computer Science program as a single-source degree.

Mr. S[redacted] reaches the same conclusion after considering all of the beneficiary's course credits. Mr. [redacted] notes that there are colleges in the United States that offer combined five-year programs encompassing both Bachelor of Science and Master of Science programs. The petitioner had submitted educational materials about some of these programs, including ones at American University and Brandeis University.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an opinion is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). The petitioner submitted the beneficiary's transcript for his Master's degree, which reflects two years of coursework. This transcript is consistent with the evaluations provided. Moreover, the petitioner has provided three consistent and reasonable evaluations all finding that the beneficiary's Master's degree is a foreign equivalent degree to a U.S. Master's degree. Thus, we are persuaded that the beneficiary qualifies for the classification sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.